

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

KIM S. SMITH,

Plaintiff,

V.

**DEBORAH HARDWICK
GROSSMAN, R.N., B.S.N., J.D.,**

Defendant.

))))))))

CIVIL ACTION NO. 3:07-cv-248-WHA

MOTION TO DISMISS AMENDED COMPLAINT

COMES NOW the Defendant Deborah Grossman, by and through counsel, and files this Motion to Dismiss the Amended Complaint and states as follows:

1. The Complaint fails to follow the requirements of Rule 10(b) of the Federal Rules of Civil Procedure by failing to aver claims in separately numbered paragraphs with limited contents on a single set of circumstances.
2. The Complaint fails to conform to Rule 10(b) of the Federal Rules of Civil Procedure by failing to state each claim in a separately numbered count.
3. The Complaint fails to follow Rule 8(a) of the Federal Rules of Civil Procedure by failing to request a demand for judgment for the relief sought by the pleader as to each separately alleged count.
4. The claims entitled Abuse of Process, False Imprisonment and Malicious Prosecution, contained in paragraphs 3 through 14 of the Amended Complaint fail to state a cause of action as a matter of law because the District Court of Chambers County, Alabama, found probable cause for the Defendant's actions and bound Plaintiff over to the Chambers County Grand Jury. A copy of the ruling of the Court is marked Exhibit A, attached hereto and

specifically incorporated herein by reference. *Shoney's, Inc. v. Barnett*, 773 So.2d 1015, 1027; *Whitlow v. Bruno's, Inc.*, 567 So.2d 1235 (Ala. 1990); *Stacks v. Pate*, 561 So.2d 1072 (Ala. 1990).

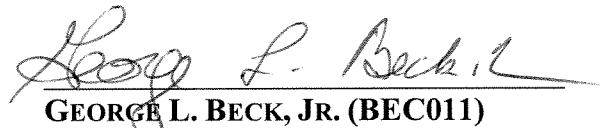
5. The claims entitled “Intentional Infliction of Emotional Distress and Mental Anguish” and “Outrage” are a misjoinder of counts or, become duplicitous because under Alabama Law claims for outrage and for intentional infliction of emotional distress are the same claim. *Hawkins v. City of Greenville*, 101 F.Supp. 2d 1356 (MD Ala. 2000); *Ex Parte Lumbermen's Underwriting Alliance*, 662 So.2d 1133, Rehearing denied (Ala. 1995).

6. The claims alleging intentional infliction of emotional distress and mental anguish and outrage fail to state a cause of action since such claims are limited to cases in which conduct of the defendant are limited to (1) those having to do with wrongful conduct in the context of family burials, (2) cases in which insurance agents employed heavy-handed, barbaric means to coerce a settlement, and (3) cases involving egregious sexual harassment. *Carter v. Harris*, 64 F.Supp.2d 1182 (MD Ala. 1999); *Wiggins v. Risk Enterprises Management, LTD*, 14 F.Supp.2d 1279 (MD Ala. 1998); *Mills v. Wex-Tex Industries, Inc.*, 991 F.Supp. 1370 (MD Ala. 1997); *Callens v. Jefferson County Nursing Home*, 769 So.2d 273, Rehearing denied (Ala. 2000).

7. The allegation labeled “Fraud” does not state a cause of action because it merely alleges the breach of a future promise. The failure to allege that the defendant had a present intent not to honor any alleged promise is fatal. *McGriff v. Minnesota Mut. Life Ins. Co.*, 127 F.3d 1410 (CA 11 Ala. 1997); *Picker Intern. Inc. v. Parten*, 935 F.2d 257 (CA Ala. 1991); *Brown-Marx Associates, LTD. v. Emigrant Sav. Bank*, 703 F.3d 1361 (CA 11 Ala. 1983); *Rice v. Barnes*, 149 F.Supp.2d 1297 (MD Ala. 2001); *Arthur Rutenberg Homes, Inc. v. Norris*, 804 So.2d 180, Rehearing denied (Ala. 2001).

8. The Complaint fails to state a cause of action.

Respectfully submitted this the ^{25th}~~24th~~ day of April, 2007.



GEORGE L. BECK, JR. (BEC011)

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the following counsel of record by placing a copy in the United States mail, postage prepaid and properly addressed to them on this ^{25th}~~24th~~ day of April, 2007.

Keith W. Veigas, Jr.
PATTON & VEIGAS, P.C.
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By:



GEORGE L. BECK, JR. (BEC011)